



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2012-0436; FRL- 9725-1]

**Approval and Promulgation of Air Quality Implementation Plans;
West Virginia; Section 110(a)(2) Infrastructure Requirements for the 2008 Lead National
Ambient Air Quality Standards**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of West Virginia. This SIP revision addresses the infrastructure program elements specified in Clean Air Act (CAA) section 110(a)(2) necessary to implement, maintain, and enforce the 2008 lead national ambient air quality standards (NAAQS).

DATES: This final rule is effective on [insert date 30 days from date of publication].

ADDRESSES: EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2012-0436**. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State

submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814-2038, or by e-mail at velez-rosa.emlyn@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA.

I. Background

Section 110(a) of the CAA requires states to submit SIP revisions that provide for the implementation, maintenance, and enforcement of new or revised NAAQS within three years following the promulgation of such NAAQS. Section 110(a)(2) of the CAA directs all states to develop and maintain an air quality management infrastructure that includes enforceable emission limitations, an ambient monitoring program, an enforcement program, air quality modeling capabilities, and adequate personnel, resources, and legal authority.

On July 3, 2012 (77 FR 39458), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. In the NPR, EPA proposed approval of West Virginia’s submittal which provides the basic program elements specified in CAA section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, necessary to implement, maintain, and enforce the 2008 lead NAAQS. The formal SIP revision was submitted by West Virginia on October 26, 2011.

II. Summary of SIP Revision

The SIP revision addresses the infrastructure elements specified in CAA section 110(a)(2)(A) through (M) for the implementation, maintenance and enforcement of the 2008 lead NAAQS in West Virginia. Specifically, West Virginia's submittal addressed the following infrastructure elements in CAA section 110(a)(2): (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). Specific requirements of section 110(a)(2) as well as the rationale supporting EPA's proposed action are explained in the NPR and the technical support document and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving West Virginia's SIP revision regarding the infrastructure program elements specified in CAA section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, necessary to implement, maintain, and enforce the 2008 lead NAAQS. This action does not include approval of portions of CAA section 110(a)(2)(C), and 110(a)(2)(I) in its entirety, which pertain to the nonattainment requirements of part D, Title I of the CAA. These two elements, and portions thereof, are not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and thus will be addressed in a separate process.

Additionally, EPA is taking separate action on the portions of CAA section 110(a)(2) infrastructure elements for the 2008 lead NAAQS as they relate to part C of Title I of the CAA, including section 110(a)(2)(C), (D) and (J) of the CAA. *See* 77 FR 45302 (July 31, 2012).

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, which approves the CAA section 110(a)(2) infrastructure requirements of West Virginia for the 2008 lead NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: August 23, 2012.

W. C. Early,
Acting Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart XX—West Virginia

2. In § 52.2520, the table in paragraph (e) is amended by adding entries at the end of the table for Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e)* * *

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
* * *	* *	* *		
Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS	Statewide	10/26/11	<u>[Insert Federal Register publication date]</u> <u>[Insert Federal Register page number where the document begins and date]</u>	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.

